BACK PAY FOR FEDERAL EMPLOYEES

HEARING

BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 10685 and H.R. 10687

BILLS TO PROVIDE FOR THE PAYMENT OF CERTAIN AMOUNTS AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES IMPROPERLY DEPRIVED THEREOF, AND FOR OTHER PURPOSES

MAY 14, 1962

Printed for the use of the
Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1962

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BACK PAY FOR FEDERAL EMPLOYEES

MONDAY, MAY 14, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 215, House Office Building, Hon. Arnold Olsen (chairman of the subcommittee) presiding.

Mr. OLSEN. The subcommittee will come to order.

This subcommittee, consisting of Mr. Udall, Mr. Moeller, Mr. Broyhill, Mr. Wallhauser, and myself as chairman, is meeting this morning to consider H.R. 10685 and H.R. 10687, identical bills introduced by Mr. Beckworth and Mr. Corbett, respectively, as a result of an official request of the Civil Service Commission.

Popularly titled the "Back Pay Act of 1962," the legislation would establish a single general and equitable principle of backpay to be followed by all Federal agencies in restoring to any employee pay and other benefits which he may have lost because of an unjustified or unwarranted personnel action which is later corrected by appropriate authority. The bills are the result of extensive consultation with employee groups and agencies extending over a period of several years.

The proposal has largely selected the best elements from current backpay authorities, welded them into a single principle, and proposed the use of this principle in every backpay case. This principle holds that an employee is entitled to redress whenever an erroneous personnel action that has stopped or reduced his compensation is corrected by appropriate authority.

The bills enable such authority, following an administrative determination or timely appeal, to pay the employee the difference between what he earned and what he should have earned for the period. Backpay protection is also extended to some employees in situations not now covered. However, the proposal does not extend to any employee any new rights of tenure, review, or appeal.

Most backpay situations in the Federal service are already covered in some way by current authorities and the principle of backpay as a part of corrective action is well established. However, the existing authorities do not provide an adequate basis for a full solution to the backpay problem. They have led to a piecemeal approach to the problem in that they may not be applied uniformly to all situations and employees and they leave gaps in coverage.

Accordingly, the Civil Service Commission has recommended this legislation as one of its major legislative goals in this session to assure that all classes of Federal officers and employees can be treated equitably and uniformly with respect to backpay.

(The bill H.R. 10685 follows:)

[H.R. 10685, 87th Cong., 2d sess.]

A BILL To provide for the payment of certain amounts and restoration of employment benefits to certain Federal officers and employees improperly deprived thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Back Pay Act of 1962".

SEC. 2. For the purpose of this Act the term "agency" means (1) the executive departments; (2) the independent establishments in the executive branch, including corporations wholly owned or controlled by the United States; (3) the Administrative Office of the United States Courts; (4) the Library of Congress; (5) the General Accounting Office; (6) the Government Printing Office; (7) the Office of the Architect of the Capitol; (8) the Botanic Garden; and (9) the government of the District of Columbia.

SEC. 3. (a) An officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable laws or regulations to have been subject to an unjustified or unwarranted personnel action which has withdrawn or reduced any part of his pay, allowance, or differential shall be entitled upon correction of the action to be paid for the period that the action was in effect in an amount commensurate with the amount he would normally have earned had he not been subject to the action, less any amounts earned by him through other employment during such period.

(b) For all purposes, including the accumulation of leave not in excess of the maximum prescribed by law or regulation, he shall be deemed to have rendered service during the period.

SEC. 4. The United States Civil Service Commission may prescribe regulations to carry out the provisions of this Act: *Provided, however*, That such regulations shall not be applicable to the Tennessee Valley Authority or its employees.

SEC. 5. There are hereby repealed—

(1) section 6(b) of the Act of August 24, 1912, as amended (5 U.S.C. 652(b)); and

(2) that part of the third proviso of the first section of the Act of August 26, 1950 (64 Stat. 477), which reads ", and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving on the date of suspension or termination, as appropriate, and the interim net earnings of such person".

SEC. 6. This Act applies to personnel actions effected on or after the date of its enactment. The provisions of law repealed under section 5 of this Act continue in force with regard to actions taken prior to the effective date of this Act.

Mr. OLSEN. We are pleased to have with us this morning as our first witness Chairman John W. Macy, Jr., of the Civil Service Commission.

Mr. Macy is accompanied by Mr. O. Glenn Stahl, Director, Bureau of Programs and Standards, and Mr. Harold H. Leich, Chief, Program Planning Division.

Will you proceed, Mr. Macy, and if you wish you will have seated with you Mr. Stahl and Mr. Leich.

STATEMENT OF JOHN W. MACY, JR., CHAIRMAN, U.S. CIVIL SERVICE COMMISSION, ACCOMPANIED BY O. GLENN STAHL, DIRECTOR, BUREAU OF PROGRAMS AND STANDARDS, AND HAROLD H. LEICH, CHIEF, PROGRAM PLANNING DIVISION

Mr. MACY. Mr. Chairman, I want to express the appreciation of the Commission to you and your subcommittee for your willingness to take up this important piece of Federal personnel legislation.

I would like to suggest that for the purpose of having a complete record you may wish to incorporate in the transcript of this hearing

my letter of September 8, 1961, to the Speaker transmitting this legislative proposal along with the section analysis and the statement of purpose and justification. My written statement is a summarization of that material in order to conserve time, but in my view the more complete document should be helpful to the subcommittee in its consideration.

Mr. OLSEN. Without objection the letter of September 8, 1961, from the Civil Service Commission to the Speaker of the House of Representatives is incorporated in the record at this point.

(The letter follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., September 8, 1961.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: We are submitting for the consideration of Congress proposed legislation to establish one general and equitable principle to be followed by all Federal agencies in restoring to their employees pay and other benefits of employment which are lost by reason of an unjustified or unwarranted personnel action subsequently corrected by appropriate authority. There are enclosed: (1) a draft bill; (2) a section analysis of the proposed bill; and (3) a statement of purpose and justification.

The proposed bill presents one comprehensive and uniform authority for backpay entitlement and computation to replace the three current authorities, because these authorities are neither comprehensive nor uniform in their application. Specifically the bill is intended to supersede the pay provisions of Public Law 80–623 and Public Law 81–733. In addition this bill provides a more specific legislative foundation for the Civil Service Commission's authority in this area now exercised under section 19 of the Veterans' Preference Act.

In brief, the proposed bill enables appropriate authority following an administrative determination or timely appeal to pay an employee who has had his compensation terminated or reduced because of an unjustified or unwarranted personnel action the difference between what he earned and what he should have earned for the period. No entitlement is created, however, without a finding by appropriate authority that the action was indeed unjustified or unwarranted and a determination by such authority to take corrective action.

As amplified in the attached statement of purpose and justification, the proposed bill extends backpay protection to certain employees and situations not covered by present authorities. Significantly, the proposed bill does not extend to any employee any rights of tenure, review, or appeal to which he is not otherwise entitled. It does require, however, that where an employee has a right to seek corrective action through administrative proceedings, and is successful in doing so, he will for pay, employment benefit, and other purposes be deemed to have rendered service at his proper grade during the period. Moreover, the proposal would strengthen the powers of agencies in making equitable pay and benefit adjustments following the correction of unjustified or unwarranted personnel actions which they decide to correct on their own initiative.

Timely processing of appeals should minimize individual retroactive payments. The cases which would be covered should continue to be largely those which are already covered by one or the other of the present authorities covering backpay. While it is not anticipated that the additional costs involved would be great, however, the principle which this bill would establish is an important one. For this reason it is hoped that the Congress will be able to act favorably on this legislation as soon as circumstances permit.

The Bureau of the Budget advises that from the standpoint of the administration's program there would be no objection to the submission of this proposal.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, JR., *Chairman.*

A BILL To provide for the payment of compensation and restoration of employment benefits to certain Federal officers and employees improperly deprived thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Back Pay Act of 1961".

SEC. 2. For the purpose of this Act the term "agency" means (1) the executive departments; (2) the independent establishments in the executive branch, includ-

ing corporations wholly owned or controlled by the United States; (3) the Administrative Office of the United States Courts; (4) the Library of Congress; (5) the General Accounting Office; (6) the Government Printing Office; (7) the Office of the Architect of the Capitol; (8) the Botanic Garden; and (9) the government of the District of Columbia.

SEC. 3. (a) An officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable laws or regulations to have been subject to an unjustified or unwarranted personnel action which has withdrawn or reduced any part of his salary, wages, or other compensation shall be entitled upon correction of the action to be paid for the period that the action was in effect in an amount commensurate with the amount he would normally have earned had he not been subject to the action, less any amounts earned by him through other employment during such period. (b) For all purposes, including the accumulation of leave not in excess of the maximum prescribed by law or regulation, he shall be deemed to have rendered service during the period.

SEC. 4. The United States Civil Service Commission may prescribe regulations to carry out the provisions of this Act: *Provided, however,* That such regulations shall not be applicable to the Tennessee Valley Authority or its employees.

SEC. 5. Section 6(b) of the Act of August 24, 1912 (chapter 389, 37 Stat. 555, as amended) (5 U.S.C. 652(b)), and the last seventy-one words of the third proviso of section 1 of the Act of August 26, 1950 (chapter 803, 64 Stat. 476) are repealed.

SEC. 6. This Act applies to personnel actions effected on or after the date of its enactment. The provisions of law repealed under section 5 of this Act continue in force with regard to actions taken prior to the effective date of this Act.

SECTION ANALYSIS

Most of the situations which could give rise to the retroactive payment of compensation or employment benefits under the provisions of this draft bill are already covered by the backpay provisions of Public Law 623, 80th Congress, Public Law 733, 81st Congress, the powers of the Civil Service Commission under the Veterans' Preference Act, and a number of decisions of the Comptroller General interpreting these authorities. The backpay provisions of this draft bill, however, would be more uniform and in some cases more equitable than those now available. In addition, the coverage of the draft bill is designed to encompass all employees of the executive branch and certain other agencies. Significantly, the draft bill neither requires any agency to review any kind of personnel action, nor defines or restricts the nature of corrective actions themselves. Moreover, the draft bill does not modify the procedural requirements of any formal system of appeals. All the draft bill requires is that where a right of appeal has been specifically granted by law or regulation, or where management on its own initiative has discovered a personnel action which in all equity should be reviewed, any corrective action as a consequence extended to a Federal officer or employee with respect to adjustment of compensation or employment benefits must be retroactive in its effect, complete in its remedies, and consistent in its application.

Section 1 of this draft bill authorizes the use of a short or popular title in citing this legislation.

Section 2 of the draft bill defines "agency" in sufficiently broad terms to include all parts of the executive branch, the government of the District of Columbia, and those other establishments of the Federal Government which look to the executive branch for personnel management leadership.

Section 3(a) of the draft bill covers all officers and employees of the agencies encompassed by the definition set out in section 2. This would include all persons in both the competitive and excepted civil service.

Section 3(a) of the draft bill in referring to "administrative determination" means a decision made by appropriate authority on its own initiative as opposed to a decision which it has been required to make in order to dispose of a formal appeal. The purpose of this provision is to grant agencies the right at their own option to correct any real injustices in the backpay area which they identify themselves, especially where no avenue of appeal may be open to the individual involved.

A BILL To provide for the payment of certain amounts and restoration of employment benefits to certain Federal officers and employees improperly deprived thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Back Pay Act of 1961".

SEC. 2. For the purpose of this Act the term "agency" means (1) the executive departments; (2) the independent establishments in the executive branch, including corporations wholly owned or controlled by the United States; (3) the Administrative Office of the United States Courts; (4) the Library of Congress; (5) the General Accounting Office; (6) the Government Printing Office; (7) the Office of the Architect of the Capitol; (8) the Botanic Garden; and (9) the government of the District of Columbia.

SEC. 3. (a) An officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable laws or regulations to have been subject to an unjustified or unwarranted personnel action which has withdrawn or reduced any part of his pay, allowances, or differential shall be entitled upon correction of the action to be paid for the period that the action was in effect in an amount commensurate with the amount he would normally have earned had he not been subject to the action, less any amounts earned by him through other employment during such period. (b) For all other purposes, including the accumulation of leave not in excess of the maximum prescribed by law or regulation, he shall be deemed to have rendered service during the period.

SEC. 4. The United States Civil Service Commission may prescribe regulations to carry out the provisions of this Act.

SEC. 5. Section 6(b) of the Act of August 24, 1912, as amended (5 U.S.C. 652(b)), and the last 71 words of the third proviso of section 1 of the Act of August 26, 1950, Ch. 803, 64 Stat. 746, are repealed.

SEC. 6. This Act applies to personnel actions effected on or after the date of its enactment. The provisions of law repealed under section 5 of this Act continue in force with regard to actions taken prior to the effective date of this Act.

Section 3(a) of the draft bill in referring to "timely appeal" means (1) a request properly made to an agency or to the Civil Service Commission seeking reconsideration of an official personnel action which has affected an employee adversely (2) initiated by an employee or his representative (3) under an appeal system or procedure established by law or regulation (4) which request has been accepted by the authority administering the particular appeals system or procedure involved. This provision of itself creates no new concepts of timeliness. On this point it relies entirely on the practices established in such other laws and regulations dealing with employee appeals as may now exist or later come into being. The purpose of this provision is to prevent employees from pressing stale claims for backpay where they themselves have slept on their rights.

Section 3(a) of the draft bill in using the phrase "unjustified or unwarranted personnel action," follows the language of Public Law 623, 80th Congress, the primary backpay authority at the time this proposal was drafted. All personnel actions in the administration of the Federal personnel systems are taken under some authority. Each such personnel action should be intended to be a proper exercise of the powers established by the particular law or regulation under which the action is taken. Nevertheless, occasionally errors are made in the exercise of these powers. Personnel actions which are found to reflect such errors may be defective on equitable or procedural grounds or both. The ruling interpretation of the phrase "unjustified or unwarranted" with reference to adverse actions in the current administration of Public Law 623, 80th Congress, encompasses both equitable and procedural considerations following the decisions of the Court of Claims in *Stringer* v. *U.S.*, 117 Ct. Cl. 30, and *Garcia* v. *U.S.*, 123 Ct. Cl. 722, and of the Comptroller General in 34 C.G. 568.

Section 3(a) of the draft bill in referring to "appropriate authority" means that agency, office, or official empowered under applicable law or regulation to correct or direct the correction of the unjustified or unwarranted action. In some cases this could be the Civil Service Commission as established, for example, in the Veterans' Preference Act. In many instances, such authority would be found at some level of agency management as defined in applicable regulations and delegations of authority thereunder.

Section 3(a) uses the phrase "applicable laws or regulations" to refer to the laws and regulations which provide the basis for operations under the Federal

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personnel systems. The draft bill looks to these laws and regulations which exist now or may later come into effect—

(1) To provide avenues and procedures for the reconsideration of unjustified or unwarranted personnel actions.

(2) To provide the legal basis for taking proper personnel actions and for correcting unjustified or unwarranted ones.

(3) To establish the locus of the authority to correct improper actions.

The phrase "under applicable laws and regulations" has been placed as indicated in the draft bill in order to insure its reference to the word "found" and the phrase "appropriate authority." It precedes the phrase "unjustified or unwarranted personnel action" in order to avoid the logical inconsistency which would be suggested by reference to "an unjustified or unwarranted personnel action under appropriate laws or regulations." As indicated previously, however, all proper personnel actions reflect an exercise of authority under an appropriate law or regulation.

Section 3(a) of the draft bill does not enumerate the specific types of personnel actions covered because it is not the cause of the action, nor how it is labeled, which is important here. What is significant is the propriety of the action and whether or not the employee affected had his compensation reduced as a consequence. Unjustified or unwarranted soparations (including retirements), suspensions, and demotions will constitute most of the situations involved.

Section 3(a) of the draft bill in the same spirit does not enumerate the specific types of corrective action which would constitute appropriate correction of the various types of unjustified or unwarranted personnel actions which may arise. The general term "correction" in the text of the draft bill has been used deliberately to assure that the proper administrative action, whatever it might be consistent with applicable laws or regulations, be taken before a backpay entitlement is created.

Section 3(a) of the draft bill establishes an entitlement to backpay in any situation where a personnel action which has terminated or decreased the compensation of a Federal officer or employee is subsequently found unjustified or unwarranted and corrected by appropriate authority. For clarity the four essentials for an entitlement to backpay under this act are set out below:

1. An official personnel action must have been taken which reduced or diminished some part of an individual's usual salary, wages, or other compensation from Federal employment. In other words, in effect, something must have been taken away.

2. The personnel action in question must have been made the subject of review by appropriate authority either because of a timely appeal or because appropriate authority on its own initiative decided to review that action. In other words, the specific action which precipitated the employee's loss must have been reexamined.

3. The personnel action in question must have been found by appropriate authority to be unjustified or unwarranted.

4. A corrective action consistent with applicable laws or regulations must have been authorized by appropriate authority as a consequence of its decision.

Section 3(a) of the draft bill, therefore, establishes for pay purposes the principle that an employee should be made whole following the correction of an unjustified or unwarranted personnel action which reduced his compensation in some way. As would be defined in detail in the regulations, the adjustment in compensation would cover everything to which the employee normally would have been entitled. The regulations necessarily would require that the adjustment in compensation recognize any obvious things in the normal course of events which would have affected the amount of compensation. With respect to reducing that amount, these would include situations, such as death before final adjudication of an appeal, separation or furlough as a result of reduction in force, transfer to another agency, and imprisonment for crime. With respect to increasing the amount of compensation, the draft bill assures credit for increments such as periodic within-grade increases and general pay raises to which the employee would have been entitled had he not been subject to the unjustified or unwarranted action. Public Law 623, 80th Congress, and Public Law 733, 81st Congress, unfortunately, prevent crediting these increments in computing the amount of backpay. On the other hand, both Public Law 623, 80th Congress, and Public Law 733, 81st Congress, are currently interpreted as including in a backpay computation the premium pay which an employee normally would have earned. To preserve this interpretation the phrase "would normally have earned," which appears in Public Law 733, 81st Congress, and which was discussed by the Comptroller General in 34 Comp. Gen. 382, has been repeated in the draft bill.

Section 3(a) of the draft bill, following the historical precedents in this area, provides that the amount of backpay to which an employee would be entitled would be reduced by whatever amount he earned through "other employment" during the period the action was in effect. The term "other employment" is taken from Public Law 623, 80th Congress, in order to assure a continuity of interpretation on this point. Both the Court of Claims and the Comptroller General view "other employment" as encompassing only that employment engaged in to take the place of the employment the employee had prior to the action against him. This interpretation was discussed by the court in *Jackson* v. *U.S.*, 121 Ct. Cl. 405, and by the Comptroller General in 32 Comp. Gen. 408. Therefore, if an employee had been separated from his position, this amount would be the difference between what his Government income should have been and what he actually earned in an employment obtained to take the place of his Government job. If he had been demoted, the amount to which he would be entitled would be the difference between what his income should have been in the proper grade and what it actually was at the lower grade.

Section 3(b) of the draft bill in using the sentence, "For all other purposes, including the accumulation of leave not in excess of the maximum prescribed by law or regulation, he shall be deemed to have rendered service during the period," provides for the complete restoration of seniority, service credit toward retirement, life insurance, health insurance, and all other benefits of employment which may have been affected by the action. This is consistent with the current administration of these matters following a court or Civil Service Commission restoration order. In addition, leave accumulation, excluded specifically from the backpay provisions of Public Law 623, 80th Congress, would be authorized uniformly by this draft bill following the precedent of the more recent Public Law 733, 81st Congress. The usual ceilings on leave accumulation would be observed, as prescribed by the law or regulation covering the particular leave system to which the employee is subject.

Section 4 of the draft bill authorizes the Civil Service Commission to make such regulations as may be necessary to carry out the provisions of this proposal much as the Commission regulates in certain other pay areas. Day-to-day application of these regulations to individual cases would be the responsibility of the agencies concerned. The General Accounting Office would resolve specific questions in individual cases as it does other matters involving claims and demands against the Government of the United States.

Section 5 of the draft bill repeals the backpay provisions of Public Law 623, 80th Congress, and Public Law 733, 81st Congress.

Section 6 of the draft bill provides that the measure shall be effective with respect to personnel actions taken on or after the date of its enactment. It is not administratively feasible to make this proposal retroactive without limitation. However, there is no more reason for making it retroactive to one date than to another. For these reasons the provisions of the draft bill would be applicable to cases arising because of unjustified or unwarranted actions taken on or after its date of enactment. Prior cases would be settled under current authorities.

STATEMENT OF PURPOSE AND JUSTIFICATION OF A DRAFT BILL TO PROVIDE FOR THE PAYMENT OF COMPENSATION AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES IMPROPERLY DEPRIVED THEREOF

PURPOSE

To assure that all classes of Federal officers and employees can be treated equitably and uniformly with respect to compensation and employment benefits as a consequence of actions taken to correct unjustified or unwarranted personnel actions.

JUSTIFICATION

This legislative proposal consolidates what is generally referred to as "backpay" authority into one logical, equitable, and comprehensive statement of entitlement with respect to compensation and employment benefits. It is more than a codification of current backpay authorities because these authorities, while adequate in many respects, may not be applied uniformly to all similar situations and do not afford completely consistent remedies. The proposal is not entirely new, however, because it has largely selected the best elements from these familiar authorities, welded them into one principle, and proposed the use of that principle in every instance where a question of backpay can be raised. Briefly this principle holds that an employee is entitled to be made whole when-

ever an erroneous personnel action which has terminated or reduced his compensation is corrected by appropriate authority. Significantly this proposal is not concerned with the substance of appeal rights, the structure of the appeals process, or the precise nature of corrective actions.

This proposal could justify itself with principles of fair play or philosophical concepts of equity and justice. Fortunately for purposes of brevity, this is not necessary. It is also unnecessary to recount how the concept of backpay has been widely accepted in industry. The simple fact is that the trend in law, regulation, and interpretation demonstrates clearly that the Congress, the courts, the agencies, and the Comptroller General have been thinking along these lines for a long time with particular emphasis on the past 15 years.

Background of current authorities

In 1947 it was pointed out in Congress, according to the legislative history, that a "glaring loophole in the present law" existed if an employee in the competitive service who successfully availed himself of a right of appeal could not always be reimbursed for the compensation he lost while his appeal was pending. In 1948, after consulting the Civil Service Commission and others, Congress responded to this need by enacting Public Law 623, 80th Congress, as an amendment to the Lloyd-LaFollette Act.

Public Law 623, 80th Congress, authorizes backpay in nonsecurity cases involving improper separations and suspensions of nonveterans with civil service status in the competitive service and all veterans who have completed their trial or probationary period. The amount of pay is computed at the rate the employee was receiving at the time of the improper action and covers the entire period the action was in effect. Leave accumulation covering the same period, however, was excluded from the other remedies to which an employee was entitled under the act.

In 1950, with the passage of Public Law 733, 81st Congress, Congress acted again in the backpay area, this time protecting executive branch employees suspended or terminated in erroneous security actions. The amount of backpay is computed as under Public Law 623, 80th Congress; however, agency heads are authorized to determine whether the employee will be paid for all or part of the period of erroneous suspension or removal. Interestingly, agency practice under this law has been to authorize payment for the entire period almost without exception. More complete as to benefits, Public Law 733, 81st Congress, has been interpreted to permit leave accumulation covering the period of the erroneous action.

The third major source of backpay authority is the Veterans' Preference Act of 1944, as amended. This act has been interpreted as authorizing backpay in cases involving improper demotions of veterans who have completed a trial or probationary period and in cases arising as a result of erroneous reduction in force actions whether or not the employees concerned are veterans.

In recent years the trend of Comptroller General's decisions interpreting these authorities has been toward greater flexibility. This trend notwithstanding, however, it is apparent that these authorities, as now stated, provide an inadequate basis for a full solution to the backpay problem. If the problem is to be corrected, new legislation must be the answer.

The need for change

Most backpay situations in the Federal service are already covered in some way by current authorities. This factor itself tends to demonstrate that the principle of backpay as a part of corrective action is well established. It suggests further that the reason the backpay picture is not complete today is more a matter of oversight than intentional arrangement. It is apparent that whenever Congress has faced the problem of backpay, it has never intended its action to discriminate against any employee who could build an equitable claim. Circumstances, unfortunately, have led to a piecemeal approach to the backpay problem.

As a consequence, veterans are now afforded broader backpay benefits than nonveterans and at any given moment there are still many veterans and nonveterans alike who could not be awarded backpay at all except in the correction of erroneous reduction in force actions. This number would include all employees serving probationary or trial periods, many nonveterans who are employed by their Government outside the competitive civil service, and all nonveterans in the competitive service in actions of demotion for cause.

Private relief legislation in individual cases cannot answer the problem, because it tends to discriminate against the person who does not seek special consideration beyond the remedies available to all. In the interests of both uniformity and

equity, therefore, there is a strong case for improving the present backpay authorities. The case is particularly strong when it is recognized that the step toward a better backpay authority is a small one in terms of costs and administrative adjustments. No great number of cases should add appreciably to current costs and the handling of all backpay cases would be little different from current procedures.

Impact of the current proposal

There are four features to this legislative proposal which should be kept in mind in order to understand what it is designed to accomplish and, just as important, what it is not designed to do:

1. *The comprehensive nature of this authority.*—The proposal assures that backpay protection would be available to a Federal employee whenever an unjustified or unwarranted personnel action which diminished his pay is corrected in his favor. The proposal does not attempt, however, to specify the precise nature of corrective actions. It requires only that the unjustified or unwarranted action be *corrected* before an entitlement is created. It is inherent in the use of the term "correction" that the administrative action referred to must be one which is consistent with applicable laws and regulations. The protection does not hinge on the operation of any particular systems of appeals, but would be available as a consequence of the operation of any system of appeals. In addition, where no avenue of appeal is available, an agency itself may award backpay to an employee merely by acknowledging that its action affecting the employee adversely was unjustified or unwarranted and correcting it.

2. *The test of diminished income.*—Many things may happen to the disadvantage of the employee on the job which may have a real or potential effect on his finances—a hoped-for promotion or job classification upgrading may be denied or delayed, a transfer to a new location may be more expensive than anticipated, a free official parking space may be lost, etc. *This proposal does not deal with situations of this sort.* The purpose of this proposal is only to permit an agency to make an employee whole from a pay and benefits point of view following its decision to correct an unjustified or unwarranted personnel action against him.

To accomplish its purpose this proposal uses the "test of diminisished income" which must be applied in every potential backpay situation before an entitlement is established under this authority. The unjustified or unwarranted personnel action, in effect, must have taken away some part of the normal salary, wages, or other compensation of the employee affected. In other words, if no part of the employee's salary, wages, or other compensation as a Government employee was actually diminished by the improper action, there can be no claim to backpay when that action is corrected.

3. *The requirement for timely action.*—In order to preserve his right to backpay, the employee under this proposal would be required to exercise the rights of appeal open to him in a timely manner. For example, an employee whose position was downgraded would lose his right to demand backpay unless he made a timely and successful effort to appeal the downgrading action. Should that employee be promoted sometime later in a routine reallocation of his position, such reallocation would have no backpay implications.

4. *The advantages of agency initiative.*—By permitting an agency to authorize backpay on its own determination in correcting an unjustified or unwarranted personnel action, this authority introduces two new elements of flexibility which strengthen the corrective powers of management. First, when an agency discovers it has inadvertently taken an unjustified or unwarranted action, it would be free to correct the action immediately on its own initiative with an appropriate pay adjustment. This avoids the loss of time and resources involved in an appeal over a matter which the agency may feel in advance should be settled in the employee's favor. Second, when an agency desires to extend back pay adjustments uniformly to all persons in the same circumstances when an appeal is won by any one of the persons involved, it would be free to do so on its own initiative.

In a recent case, for example, a group of veterans in wage board jobs successfully appealed to the Civil Service Commission their demotions as a result of job classification downgradings and were awarded backpay. A nonveteran worker in the same group, who had no right to appeal to the Commission, benefited by the subsequent reinstatement to grade but was denied the backpay adjustment his associates received, because the agency had no authority to pay him. This proposed authority would have permitted the agency, had it desired, to authorize the same kind of adjustment to all of the employees involved.

Cost estimate

It is very difficult to assess the cost involved in this proposed bill. This is not because these costs would constitute a major expenditure. Instead it is because "added" cost is the information needed while readily available information unfortunately reveals little about current cost. Today agencies geuerally absorb the costs of compensating employees entitled to backpay. Under the proposed bill, no change in this is envisioned.

Potentially some agencies may have a somewhat larger number of cases involving backpay entitlement than they have at present. On the other hand with such clear-cut and comprehensive entitlement established, agencies would have an added incentive to conduct their appeal and review activities in a timely and expeditious manner in order to minimize the cost of such entitlements. Moreover, the draft bill would tend to limit the size of retroactive payments because employees who neglect to use their appeal rights, if any, in a timely manner would lose their right to demand backpay.

In the benefits area it would be virtually impossible to "cost" the accumulation of leave covering periods of improper separation or suspension as authorized by the draft bill. Taken at different times, leave has different values. In addition, while terminal lump-sum annual leave payments can represent a cash expense, sick leave should have no actual value unless the employee is ill. It would seem reasonable to assume, therefore, that this legislative proposal would create no new costs or inconveniences in the leave area more burdensome than those agencies are adjusting to now.

Those benefits to which employees are entitled on a contributory basis, such as retirement, life insurance, and health insurance, would not constitute added costs under the draft bill. The employee would continue to be required to make up his back contributions, along with his taxes, for any period during which they were not withheld. This requirement stems from the fact that where an employee is granted the benefits of the administrative fiction of having "rendered service" he also assumes a responsibility for the obligations which that service would have imposed.

It is about as difficult to estimate the number of new backpay entitlements which would arise under this proposal as it is to assess the value of these entitlements. The size of the new groups covered in some instances is very large. Conversely, however, the potential number of backpay cases likely to arise from these groups, experience tells us, is surprisingly small. For example, the new proposal would protect career nonveterans in cases of demotion for cause. On appeal, the Commission reviews the procedural adequacy of such actions in the competitive service. Although there are about 1 million nonveterans in the competitive service, there was not one appellant in these circumstances between July 1, 1959, and June 30, 1960, who would have been entitled to backpay because of Commission action. We do not know how many such cases were handled at agency levels under circumstances which would have involved backpay under this proposal. We would have to assume though that the number was fairly small because the Commission so rarely receives appeals of this kind.

Nonveteran employees in excepted positions for the first time would be entitled to backpay if they lost compensation as a consequence of unjustified or unwarranted suspensions, separations, or demotions for cause. At present, these employees, and there are about 100,000 of them, have no appeal to the Civil Service Commission in such actions, and agencies have considerable flexibility in actions affecting their tenure. Under this proposal, therefore, there would be only as many new backpay entitlement cases involving these employees as procedures under agency control would generate.

This proposal would also cover, for the first time, employees serving probationary or trial periods. At any one time, there are probably between 100,000 and 175,000 such persons throughout the service. The proposal requires, however, that there can be no entitlement to backpay without a finding that the adverse action involved was unjustified or unwarranted. Compared to persons who have completed their trial period, the appeal rights of probationary employees are very limited. Naturally this would tend to keep down the number of entitlement cases.

Under section 2.301(c)(2) of the Commission's regulations, the Commission considers appeals of terminations based on conditions arising prior to the appointment of probationers in the competitive service. In less than 100 cases last year were Commission determinations such that an employee would have been entitled to backpay. A probationary or trial period employee who is terminated for reasons occurring after employment generally does not have a right to appeal to the Commission.

In conclusion, the Commission is unable to estimate the costs of this proposal precisely without an expensive and detailed study going into the experience of each Federal agency. With the facts which are available, however, it seems safe to estimate that less than $400,000 per year in *additional* costs would be involved Government-wide and that most of these costs would be of the type which agencies customarily absorb in the normal course of operations. The proposed legislation will not involve additional expenditures for personnel services to administer its provisions.

Mr. MACY. Mr. Chairman, I am appearing here today as you indicated in your opening statement to urge the support of the subcommittee of H.R. 10685 introduced by Congressman Beckworth, and H.R. 10687 introduced by Congressman Corbett.

These are identical bills "to provide for the payment of certain amounts and restoration of employment benefits to certain Federal officers and employees improperly deprived thereof, and for other purposes."

The purpose of H.R. 10685 is to establish a single backpay authority which will apply following the correction of an unjustified or unwarranted personnel action which diminished an employee's pay or employment benefits. Under the proposed authority the Federal employee involved in such actions would be made whole financially.

The underlying principle in the proposal is simple, comprehensive, and easy to apply. It contains the essence of justice and equity. It is designed to put the affected employee back exactly where he was as if nothing untoward had happened to him. This is the elementary fair play called in the language of the law "making a person whole" for the injuries he has suffered.

The proposal as embodied in H.R. 10685 and H.R. 10687 was presented to the Congress by the Civil Service Commission following discussion with and favorable reaction from employee groups and veterans' organizations consulted during the drafting stage.

H.R. 10685 supersedes the back pay provisions of Public Laws 80–623 and 81–733, and provides a more specific legislative foundation for the Civil Service Commission's authority in this area under the Veterans' Preference Act. These current authorities, while adequate in many respects, have led to a piecemeal approach to backpay in that the authorities may not be applied uniformly to all situations and employees. This proposed enactment is desirable and necessary to replace a patchwork of existing legislation which leaves gaps in coverage and which applies slightly different principles of reimbursement to different circumstances. In an area such as this equal justice resulting from uniform treatment is most important.

But H.R. 10685 is much more than a codification of current backpay authorities. H.R. 10685 extends backpay protection to some employees in situations not now covered. More specifically, the gaps in employee coverage that would be closed by enactment of H.R. 10685 are:

1. Employees serving probationary or trial periods cannot be authorized backpay unless an erroneous reduction-in-force action is involved, or unless the erroneous action was handled as a security case under the provisions of Public Law 733.

2. Nonveterans in the excepted service who have been improperly removed, suspended, or demoted cannot be authorized backpay unless the erroneous adverse action was taken as a result of reduction in force.

3. Nonveterans in the competitive service who have been improperly demoted cannot be authorized backpay unless the erroneous demotion was taken as a result of reduction in force.

4. Backpay authorized under the provisions of Public Law 623 does not provide credit for leave accumulation to cover the period involved.

5. Under the provisions of Public Law 733, agency heads are authorized to pay for all or any part of the period of suspensions or terminations in erroneous security cases.

6. Neither Public Law 733 nor Public Law 623 provides for crediting for increments such as periodic within-grade increases and general pay raises to which the employee would have been entitled had he not been subject to the unjustified or unwarranted action.

It is apparent that the current authorities may not be applied uniformly to all similar situations and do not afford completely consistent remedies.

Private relief legislation in individual cases not covered by current authorities is not an appropriate solution to the problem. While this remedy is open to all who seek to pursue it—and a fair number do—it must be admitted that this process tends to discriminate in favor of those who are unusually knowledgeable, persistent, and patient. Moreover, reliance on this remedy is burdensome to the committees of the Congress and their staffs and to the agencies involved in preparing recommendations. While no one balks at the work that justice requires or intends to demean the importance of each bill to the individual concerned, it must be admitted that the work required tends to be disproportionate to the good that is done. It is entirely possible that the total cost to the Government of granting this relief can equal or exceed the cost of the relief itself. Therefore, a major justification for this bill is that it should reduce the requests for private bills and the work of processing them. We are not able to produce cost estimates of savings in an area such as this but we do suggest that the savings will be a major offset against the costs of more extensive coverage.

While H.R. 10685 closes gaps in existing legislation and may be somewhat more generous than the least liberal of existing backpay authorities, it is basically perfecting legislation. It does not create any new rights of tenure, review, or appeal. It is concerned only with the backpay consequences of corrective actions that may now be taken. It has nothing to do with the substance of appeal rights, the structure of the appeals process, or the precise nature of corrective actions. It requires only that when an erroneous action has been corrected by the appropriate authority, the employee be given backpay. This bill enters the picture only when it has finally been decided officially, and through whatever means may be authorized now or in the future, that a wrong has been done that should be set right. Then this bill comes forward and says "never mind whether the injured party is a veteran or not, never mind whether the injury resulted from an improper removal, or an incorrect demotion, never mind whether the person hurt was in the competitive service or in the exempted service, put him back where he would have been had this error not occurred." To preserve his right to backpay, the employee, under H.R. 10685, would be required to exercise appeal rights available to him within prescribed time limits. However, where no appeal channel is available, an agency could award backpay to an employee by acknowledging and correcting its erroneous action.

By permitting an agency to authorize backpay on its own decision to correct an erroneous personnel action, the proposed authority introduces two new elements of flexibility which strengthen management's corrective powers.

First, upon discovering an erroneous personnel action, the agency would be free to correct it immediately with an appropriate pay adjustment. It would not be necessary for the employee to initiate a time-consuming and costly appeal to the Civil Service Commission.

Second, when it wishes to extend backpay adjustments uniformly to all employees in the same circumstances when an appeal is won by any one of the persons involved, the agency would be free to do so on its own initiative.

H.R. 10685 refers to unwarranted personnel action which has withdrawn or reduced any part of his "pay, allowance, or differential * * *." Both Public Laws 623 and 733 are currently interpreted as including in a backpay computation the premium pay, including overtime pay, which an employee normally would have earned, and such allowances and differentials as:

(1) differentials for hardship oversea posts;

(2) cost-of-living allowances paid in certain nonforeign areas, for example, Alaska; and

(3) living quarters allowance authorized for foreign areas if free Government quarters are not provided.

To preserve this interpretation, the phrase "normally would have earned," which appears in Public Law 733, has been repeated in our proposal.

In the interests of both uniformity and equity, therefore, the Civil Service Commission believes there is a strong case for improving the present backpay authorities through enactment of H.R. 10685. The case is particularly strong when it is recognized that the step toward a better authority is a small one in terms of cost and administrative adjustments.

It is very difficult to assess the costs involved in H.R. 10685. However, it seems safe to estimate that less than $400,000 per year in additional costs would be involved governmentwide, and that most of these costs would be of the type of which agencies normally absorb in the normal course of operations.

Speaking on behalf of the Civil Service Commission, I recommend that your committee give H.R. 10685 its favorable consideration.

I wish to thank you and your colleague for your attention. I will be glad to answer any questions you may have. Mr. Stahl and Mr. Leich will join me.

Mr. OLSEN. Thank you, Mr. Macy.

Do you have any questions, Mr. Broyhill?

Mr. BROYHILL. No, thank you.

Mr. OLSEN. I have no questions. This seems to be something we are all agreed about.

Mr. MACY. I think so. It is one of those issues where there appears to be no controversy and where this is an equitable move to bring existing authorities up to date.

Mr. OLSEN. Thank you very much for being with us this morning.

Mr. MACY. Thank you, sir.

Mr. OLSEN. Our next witness is Mr. John McCart, legislative representative, the American Federation of Government Employees, AFL–CIO.

Mr. BROYHILL. Mr. Chairman, on the record, before Mr. McCart starts here.

In view of the fact that this is noncontroversial legislation, I am wondering if the witnesses who follow Mr. McCart, including Mr. McCart, would prefer to have their statements included in the record and just to hit the highlights. We may be able to finish consideration of this legislation today within this subcommittee.

STATEMENT OF JOHN McCART, LEGISLATIVE REPRESENTATIVE, THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Mr. MCCART. Mr. Chairman, I am John A. McCart, director of legislation of the American Federation of Government Employees.

As nearly complete justice as can be achieved by a legislative enactment which seeks to correct injustices is the objective of the bills—H.R. 10685 sponsored by Representative Beckworth and H.R. 10687 by Representative Corbett.

When the payment of compensation and restoration of employment benefits lost because of improper or erroneous personnel actions were originally authorized, the purpose was the same as that of the bills presently before this committee. It was recognized then that these earlier laws were intended to close loopholes in the then existing law. However, subsequent events proved that these earlier enactments fell short of their objectives in various ways and to varying degrees.

The Beckworth and Corbett bills are designed to close the loopholes still remaining. We commend their sponsors and emphatically approve the legislative proposal they have developed.

Three laws which authorize the payment of compensation or restoration of employment benefits lost through erroneous actions are involved in these two bills. They are laws of very great benefit to Federal employees to the extent they now afford positive advantages. Inasmuch as they fail to enable the employee who has been unjustly treated "to be made whole" is enough to charge them with serious failure. It is to correct such failure that H.R. 10685 and H.R. 10687 are acutely needed.

Public Law 623, amending the Lloyd-LaFollette Act of 1912, was passed in 1948, to authorize payment of compensation to an employee in the classified service who was improperly separated without pay, either by reason of suspension or attempted final removal. It was pointed out in the Senate report of the bill to that body July 2, 1947, that "despite the desire of the (Civil Service) Commission to reimburse the employee for the period lost through no fault of his own, the Commission is powerless to act."

Although the act represented a studied effort to right a wrong, it failed to go all the way. Later it became apparent that it restored backpay but did not authorize the restoration of accumulated leave.

Two years after Public Law 623 became law, another statute included provisions governing certain phases of this area of backpay and related benefits. That statute was Public Law 733, 81st Congress, approved August 26, 1950. But again it missed the complete objective. Whereas the preceding statute had excluded restoration of annual leave, Public Law 733 provided for recrediting the employee with his annual leave, but something was still overlooked. It was not made entirely certain that the employee wrongly terminated or suspended would be paid all his compensation lost during a period of erroneous suspension. The law authorized agency heads to determine whether the employee would be paid for all or part of the period of erroneous suspension. Thus he could legally have been paid, for example, for 91 days or for only 1 of those 91 days of a period of erroneous suspension. Despite the latitude allowed in the law, agencies have made a practice of paying for entire periods almost without exception. However, full payment is not required and the lack of such provision constitutes one of the "glaring loopholes" referred to in the Senate report on the bill enacted into law in 1948.

Neither of these laws provides credit for periodic within-grade salary increases or for pay raises which occur during the time an employee is off the active duty roll. This is a serious defect and should be remedied.

The third statute which has been interpreted as authorizing backpay is the Veterans' Preference Act of 1944, as amended. Such authority covers cases involving improper demotions of veterans who have completed a trial or probationary period and in cases arising because of erroneous reduction-in-force actions whether an employee involved is or is not a veteran.

It is unfortunate, but solution to the backpay problem has been developed so far on a piecemeal basis. As a result, coverage of employees in different status groups has lacked uniformity. Veterans are afforded broader backpay benefits than nonveterans, but there are still many veterans and nonveterans who may not be awarded backpay except in instances of correction of erroneous reduction-in-force actions. Included in this group are (1) all employees serving probationary or trial periods, (2) many nonveterans employed outside the competitive civil service, and (3) all nonveterans in the competitive service who are demoted for cause. These nonveterans may be compensated when restored to duty after a period following improper separation or suspension.

This variance of treatment of employees having different employment status most certainly points to the need for amending these laws so that the inequities already indicated may be eliminated.

If an agency has corrected an erroneous personnel action, the treatment of the employee affected should be the same in every case. Study of the statutes bearing on this matter of compensation and of restoration of lost benefits leads one to believe that Congress intended to accord all employees equal treatment. These bills bring that intent more nearly to complete achievement.

The bills accomplish that objective, first, by stating agency coverage on a broad basis. Then it seeks to make certain that an unjustified or unwarranted personnel action will entitle the affected employee to be paid for his loss of compensation, leave or other benefits. Fur-

thermore, this payment or restoration is to take place either at the instigation of the employee or by the voluntary action of the agency.

An important provision in section 3(a) of the bills is that payment would be made "in an amount commensurate with the amount he would normally have earned had he not been subject to the action." This provision is significant. It would have the effect of compensating an employee for overtime or night differential which he would have ordinarily earned had he not been suspended or erroneously separated. It would extend also to such a benefit as oversea allowance, even if the employee had meanwhile returned to this country.

The number of employees who may be affected by this legislation within a year probably would be small, although an estimate of numbers or of cost is not within the realm of practical accomplishment. However, be it large or small, one cannot overlook the fact that the issue is simply that of eliminating injustice so far as possible from all types of personnel action falling within the scope of the existing law that would be amended.

It is difficult to find a more compelling reason for early enactment of any legislative proposal.

Now to proceed to summarize the inequities that we feel will be corrected under this legislation.

Before doing that I would like to express our appreciation to the subcommittee and to the authors of the bills, Congressmen Beckworth and Corbett.

As we see it, H.R. 10685 and H.R. 10687 will do these things: Under Public Law 623, the original pay restoration statute, there was no provision for the accumulation or for crediting leave which was accumulated during the period of an employee's separation or suspension.

Public Law 733 permits agency heads to pay all or part of the pay that should be credited to an employee who is erroneously or wrongfully separated or suspended. In other words, the authority is flexible with the agency as to the amount of money which an emlpoyee will receive upon his restoration.

Probationary employees, both veterans and nonveterans, are not entitled to restored pay upon a finding that they were erroneously or wrongfully separated. Nonveterans outside of the competitive service do not have the protection of the current laws. Nonveterans who are demoted for cause are not protected under the present statutes. All of these things would be corrected in the legislation under consideration by the subcommittee.

In addition, the bills would reaffirm the existing authority for the payment of overtime and premium pay, night differential, and various allowances to which an employee would have been otherwise entitled had he not been separated or suspended.

These, then, are the things that the legislation will accomplish in our view.

We think they are meritorious. Each time that Congress has been confronted with legislation to make employees whole when they have been erroneously or wrongfully separated or suspended they have acted. Since these matters have been brought to your attention in the current legislation, we feel that you will want to act on them also.

We heartily endorse, Mr. Chairman, H.R. 10685 and H.R. 10687.

Mr. OLSEN. Thank you, Mr. McCart.

Do you have any questions, Mr. Broyhill?

Mr. BROYHILL. No.

Mr. OLSEN. Thank you for being with us this morning.

Mr. MCCART. Thank you.

Mr. OLSEN. The next witness is Mr. Luther C. Steward, Jr., assistant to the president, National Federation of Federal Employees.

STATEMENT OF LUTHER C. STEWARD, JR., ASSISTANT TO THE PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. STEWARD. I am Luther C. Steward, Jr., National Federation of Federal Employees.

To quote and paraphrase Administrator Halaby, who appeared before this committee last week, I am not here to read to you, and I don't think I have to convince you as to the merit of these two bills.

The National Federation of Federal Employees is happy to support this legislation, and I should like to commend this committee for its prompt consideration of this legislation.

It might be pointed out for the record that this is 1962 and the need for this legislation first really began to develop in 1921 when the first Comptroller General, J. Raymond McCarl, began to issue a series of rulings overturning former decisions of the Comptroller of the Treasury. So, while we have waited 41 years for this perfecting legislation, it was worth waiting for.

I would like to commend the Civil Service Commission for taking the initiative in introducing this legislation, and I urge your committee to take prompt and favorable action.

Thank you for the opportunity to appear.

Mr. OLSEN. Thank you, Mr. Steward.

The next witness is Mr. James H. Rademacher, assistant secretary-treasurer, National Association of Letter Carriers.

Mr. Rademacher.

STATEMENT OF JAMES H. RADEMACHER, ASSISTANT SECRETARY-TREASURER, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. RADEMACHER. Thank you, Mr. Chairman.

Mr. Chairman and members of this subcommittee, my name is James H. Rademacher. I am assistant secretary-treasurer of the National Association of Letter Carriers which is located in Washington, D.C., and which represents 155,000 letter carriers and other Federal workers.

Our purpose of being represented before this subcommittee today is to wholeheartedly endorse H.R. 10685 by Congressman Beckworth and H.R. 10687 by Congressman Corbett, both bills having to do with backpay and restoration of all lost benefits when an employee has been reinstated to his former position after corrective action has been taken following a hearing or a review by authorized agencies.

We are particularly concerned about the inequities in existing laws wherein certain employees of the Federal Government are not included and are denied benefits which were lost due to suspensions, removals, or other adverse action. We have particular reference to the probationary or temporary employee who is not included in the provisions of public laws which protect career employees who are restored to their positions following this adverse action.

Case in point which emphasizes the need for coverage of temporary indefinite employees is that of Postal Worker John Zucconi, of Hollywood, Fla. Following a letter of charges for alleged disorderly conduct, Mr. Zucconi was removed from his position as a temporary letter carrier at the Hollywood Post Office on March 17, 1961. He had been appointed into Federal service from an eligible register pending a vacancy in the career complement. In the postal service from time to time it has been necessary to appoint temporary employees from the register to handle the abnormal mail volume, especially in areas of tremendous growth.

Mr. Zucconi filed a request for a hearing with the regional director of the Post Office Department and the hearing was held on April 3, 1961. Under date of April 26, 1961, Mr. Zucconi was notified that in the opinion of the regional director the removal action should be sustained. He then appealed to the Post Office Department for a departmental hearing. On June 21, 1961, he was notified that his appeal for a hearing had been received and that his case was placed on the official docket in Washington, D.C. On December 13, 1961, the Assistant Postmaster General notified Mr. Zucconi that the Postmaster General had made the decision that the carrier be reinstated to his former position at the Hollywood Post Office.

Mr. Zucconi was restored to his position in January 1962, without the benefit of retroactive pay. He was unemployed for more than 9 months and in having been removed from the rolls he lost the benefit of annual and sick leave, the benefit of credit toward his annual step increase and the loss of service credit under the Social Security Act under which he was included because of his temporary status.

It is our understanding that the measures now under discussion would provide Mr. Zucconi with: (1) retroactive pay to the date of his removal, (2) service credit toward his next step increase, and (3) because of returning to a salary status his social security status will continue from the date of separation.

The above case is one of many similar incidents where Federal employees have not been treated equitably because of their particular status. We understand that the bills now being considered by this committee would provide equal benefits for all Federal employees including probationary and nonveterans; and further allowing full restoration benefits to employees who are removed for security reasons and are subsequently restored to their positions.

It appears what is needed is a positive legislative approach such as recommended in H.R. 10685 and H.R. 10637 so that an employee would not be dependent upon agency policies or Comptroller General decisions. If enacted this legislation would have each restored employee treated in the same manner and allow them complete retroactive effects so that their employment benefits would be consecutive just as though no adverse action had even been taken.

The backpay policies in the Federal service are covered in one way or another by current authorities. Generally after legislation is placed into practice, determinations of oversights are made and it is felt the legislation being considered today would actually indicate the desire of Congress to consolidate existing legislation on the subject. In their continuous and constant keen desire to maintain equitable and realistic laws governing such facets of Federal employment, Congress should take immediate steps to see that the oversights are corrected and that one firm law relative to this subject matter be adopted.

A Federal worker who is restored to his position should be provided with the benefits of this legislation irrespective of his position in Government service, whether he be a veteran, whether he be a career employee, and regardless of the reasons for the adverse action having been taken. This legislative body will find that the costs of this legislation, if enacted, would be insignificant to the overall morale value which would be established by a policy of equitable treatment of all those who have selected the Federal Government as an employer.

Congressmen Beckworth and Corbett are to be commended for their apparent desire to consolidate policies, laws, and decisions relative to a most important subject.

We appreciate the opportunity of presenting testimony in behalf of these bills and do urge favorable action by this committee.

We realize, Mr. Chairman, that this bill would not be retroactive. We don't see how it could be. But the case that was just mentioned to you is a clear indication of the importance of this legislation, and we certainly trust that the subcommittee will recommend concurrence to the full committee.

Mr. OLSEN. Thank you, Mr. Rademacher. We appreciate your coming this morning.

Mr. BROYHILL. Do you know whether there is any provision in existing law for restoring this backpay to Mr. Zucconi?

Mr. RADEMACHER. There is no provision, sir, under existing law.

Mr. BROYHILL. Mr. Macy pointed out in his testimony that there were a lot of existing laws that could be used, but this would compile them all together.

Mr. RADEMACHER. Since this concerns a temporary or a probationary employee, there are no laws which would affect him favorably.

Mr. BROYHILL. The only relief, then, that Mr. Zucconi could have is a private bill.

Mr. RADEMACHER. I doubt, sir, that this is the type of matter that a private bill would correct.

Mr. BROYHILL. A bill could correct any type of matter.

Mr. RADEMACHER. I am happy to note your interest, and I'm going to refer Mr. Zucconi to your attention.

Mr. BROYHILL. Refer it to his Congressman.

Mr. RADEMACHER. That's all, sir.

Mr. OLSEN. Thank you very much, Mr. Rademacher.

The next witness is Mr. John MacKay, president of the National Postal Union.

Mr. MacKay.

STATEMENT OF JOHN W. MacKAY, PRESIDENT, NATIONAL POSTAL UNION; ACCOMPANIED BY WALTER O. NOREEN, EXECUTIVE VICE PRESIDENT, NATIONAL POSTAL UNION, WASHINGTON, D.C.

Mr. MACKAY. Mr. Chairman and members of the subcommittee, I am accompanied here this morning by our executive vice president, Mr. Walter O. Noreen.

My name is John W. MacKay. As president of the National Postal Union, I am privileged to represent approximately 40,000 postal workers affiliated in over 400 local unions in 43 States, the island of Puerto Rico and the District of Columbia.

We are grateful, Mr. Chairman and members of this subcommittee, for these hearings on H.R. 10685, as introduced by Hon. Lindley Beckworth, and H.R. 10687, by Hon. Robert J. Corbett. These identical measures, which we hope will become the "Back Pay Act of 1962," are designed to provide a long-overdue benefit to postal and Federal employees.

During the many years of our experience, in representing postal workers charged with a violation of law and regulations, we have become familiar with the many complications that prevail. Ofttimes the accused employee is subjected to long and frustrating delay in the existing appeal procedures and it is not unusual for such appeals to be considered by two and sometimes three different governmental agencies. The Post Office Department, the Civil Service Commission, the Government Accounting Office, and even the Department of Justice all may become involved in the proposed dismissal or termination from Federal service. Having experienced such a long and protracted consideration and having been subsequently declared "Not guilty," we believe the accused should be entitled not only to payment of lost compensation but also restitution of sick and annual leave as well as credits for advancement and/or retirement that would otherwise have accrued to his credit had the unjust accusations never been made.

We have long advocated an employee, accused of wrongdoing or issued a letter of charges, should retain employment until the appeal procedure has been fully utilized and a final decision rendered. Obviously, it would not be practicable to retain an employee unquestionably guilty of a major offense involving theft, destruction of Government property, or some criminal or injurious act detrimental to the safety or welfare of his fellow employees. However, in all too many instances, disciplinary actions are threatened, charges issued with resultant appeals and hearings over minor irregularities that should have no validity in determining an employee's retention in the service.

We realize the intent of the proposals under consideration is to correct a deficiency prevailing after a final determination of unwarranted charges. However, we believe it appropriate to suggest to the committee consideration be given a further amendment to the act of August 24, 1912, as amended (5 U.S.C. 652(a)), to provide that an employee shall be retained on active duty status pending a final decision on the charges unless positive evidence exists the employee was responsible for damage to Government property or loss of funds or action detrimental to the interests of the Government and/or injurious to fellow workers, to the extent such retention on active duty could result in further damage and/or injurious action.

We wish to convey our gratitude to the authors of these measures and to the members of this subcommittee for their efforts to correct this inequity. We hope the committee will recommend prompt action and passage of these proposals. We thank you for this opportunity to testify thereon.

Mr. OLSEN. Thank you very much, Mr. MacKay; and thank you, Walter Noreen, for being here with us this morning.

We are all agreed on this, apparently, and we will certainly take into consideration your expert recommendation.

Mr. MACKAY. We would like to have you consider the recommendation for amendment that we have offered. We feel that it is something that is very greatly needed throughout the Federal service as far as disciplinary actions are concerned.

Mr. OLSEN. I certainly want to assure you of its consideration, but unless there is substantial unanimity on the committee, we don't want that additional suggestion to hold up the bill, but it will certainly be considered.

Mr. MACKAY. Thank you, sir.

Mr. OLSEN. Thank you.

The next witness is Mr. James Langan, operations director, Government Employes' Council, AFL–CIO.

STATEMENT OF JAMES K. LANGAN, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYES' COUNCIL, AFL–CIO

Mr. LANGAN. Thank you.

Mr. Chairman and members of the subcommittee, my name is James K. Langan, operations director, Government Employees' Council, AFL–CIO, a federation of unions representing some 23 affiliates with approximately 650,000 members. I wish to express the appreciation and thanks of the council to the chairman and members of this subcommittee for scheduling these hearings.

The council is pleased to acknowledge its appreciation to Representatives Beckworth and Corbett for the introduction of H.R. 10685 and H.R. 10687, respectively. The provisions of the bills will correct an obvious injustice to Federal employees who have been reduced in salary, suspended, or separated in an action that was later found improper. We also want to commend the chairman and members of the subcommittee for their interest and consideration in scheduling early hearings.

Private enterprise and the courts of the land have long recognized that a worker is entitled to receive benefits and recompense when it was found that their denial was not proper. These bills will establish this principle in Federal Government personnel actions.

The Government Employees' Council endorses the purpose of the bills and hopes that this subcommittee will report one of them out favorably.

Mr. OLSEN. The next witness is John F. O'Connor, legislative director, United Federation of Postal Clerks.

STATEMENT OF JOHN F. O'CONNOR, LEGISLATIVE DIRECTOR UNITED FEDERATION OF POSTAL CLERKS, WASHINGTON D.C.

Mr. O'CONNOR. Mr. Chairman and members of the committee, for the record and for purposes of identification, I am John F. O'Connor, legislative director of the United Federation of Postal Clerks. This organization represents in excess of 145,000 members.

At the outset we desire to express our appreciation to Representative Beckworth for the introduction of H.R. 10685 and to Representative Corbett for the introduction of H.R. 10687. We believe this legislation is highly proper and very timely.

Both H.R. 10685 and H.R. 10687 provide that an officer or employee of an agency who has been found by appropriate authority to have been subjected to an unwarranted personnel action which has caused the withdrawal or reduction of his pay, allowances, or differential shall

be repaid for the period that action was in effect commensurate with the amount he would normally have earned, less any amounts earned by him through employment during such period.

The language of the bills is such that in our opinion there should be no question as to the entitlement to such pay, allowance, or differential by an employee who has been wrongfully accused and found not guilty.

We also believe that the language of the bills providing as they do that an employee shall accumulate both annual and sick leave as though he had rendered service during the period is a proper action.

The bills will correct injustices, and we, as an organization, highly endorse the proposed legislation.

We also appreciate the opportunity of presenting our viewpoint.

Mr. OLSEN. I have received a letter from Mr. John S. Mears, legislative representative of the American Legion, which I will insert in the record at this time.

(The letter follows:)

THE AMERICAN LEGION,
Washington, D.C., May 15, 1962.

Hon. ARNOLD OLSEN,
Chairman, Special Subcommittee to Consider H.R. 10685 and H.R. 10687, House Post Office and Civil Service Committee, House Office Building, Washington, D.C.

DEAR CONGRESSMAN OLSEN: The American Legion supports H.R. 10685 and H.R. 10687, the two bills presently under consideration by your subcommittee. This legislation would provide for the payment of certain amounts of backpay and the restoration of employment benefits to Federal employees who have been improperly deprived of same.

The American Legion has had long experience with this problem in connection with its efforts to assist veterans with their appeals to the U.S. Civil Service Commission under the Veterans' Preference Act of 1944.

It is inconceivable that Congress would provide for a system of appeals from adverse actions on the part of the employing agency without intending, once an appeal is won by the individual, that he not only be restored to his position, but that he be made "whole" so to speak by an award of backpay and restoration of benefits lost by reason of the unjustified or unwarranted personnel action. It has always been the opinion of the American Legion that to do less falls far short of our concepts of equity and fair play.

To the best of our knowledge, the courts have been unanimous in awarding judgments for retroactive pay in these situations. But this seems to us to force a hardship on an individual and this legislation would eliminate such recourse to the courts which should have been unnecessary in the past.

We would like to suggest that the language of the bill be amended to make it crystal clear that the agency concerned must restore the individual to the position (or one of like stature and pay) from which he was removed. In our experience, agencies have refused to restore a person, even though section 14 of the Veterans' Preference Act, in the next to last proviso, states that: "It shall be mandatory for such administrative officer (who has improperly discharged the veteran) to take such corrective action as the (Civil Service) Commission finally recommends." (5 U.S.C. 863.) See also section 19, which states: "Any recommendation by the Civil Service Commission * * * shall be complied with by such agency." (5 U.S.C. 868.) In the face of this clear language, agencies have refused to restore veterans to their positions and the Civil Service Commission has felt it has no power to enforce its recommendations. As an example, see the recent decision of the U.S. Court of Appeals for the District of Columbia in the case of *Born* v. *Allen*, No. 15450, decided November 28, 1960.

Since agencies have refused to abide by such clear language, we have suggested this legislation be amended to specifically include the requirement that an individual be restored to his job, as well as being compensated for the period he was illegally or unjustifiably separated and having other benefits restored.

It may be well to consider what further power the Civil Service Commission needs to enforce its recommendations. The American Legion has always been of the opinion that the clear intent of Congress, as expressed in the Veterans' Preference Act, was sufficient, but evidently we are in error. We have brought

this to your attention so that this legislation, which covers all employees, will not suffer the same flagrant rebuffs. Naturally, it will strengthen our position under the Veterans' Preference Act.

We appreciate this opportunity to express our views and if there is no objection we would appreciate it if this letter is incorporated in the printed record of the hearings.

Sincerely yours,

JOHN S. MEARS,
Legislative Representative.

Mr. BROYHILL. Mr. Chairman, if that is all the witnesses, I would move we go into executive session.

Mr. OLSEN. Without objection, it is so ordered. We will go into executive session.

(Whereupon, at 10:45 a.m., the subcommittee was adjourned.)

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TRANSMITTAL SLIP	DATE 5/24/62
TO: Mr. Warner	
ROOM NO.	BUILDING

REMARKS:

You raised a question yesterday about HR. 10687 yesterday. I have attached a copy of the hearings. It was ordered reported on the 17th

FROM: [illegible] (Carl)		
ROOM NO. [illegible]	BUILDING	EXTENSION

FORM NO. 241 1 FEB 55 REPLACES FORM 36-8 WHICH MAY BE USED. GPO : 1957—O-439445 (47)

+ the report will be filed today or tomorrow.

STAT [redacted] is in GW Hospital - quite ill. Will give you details.